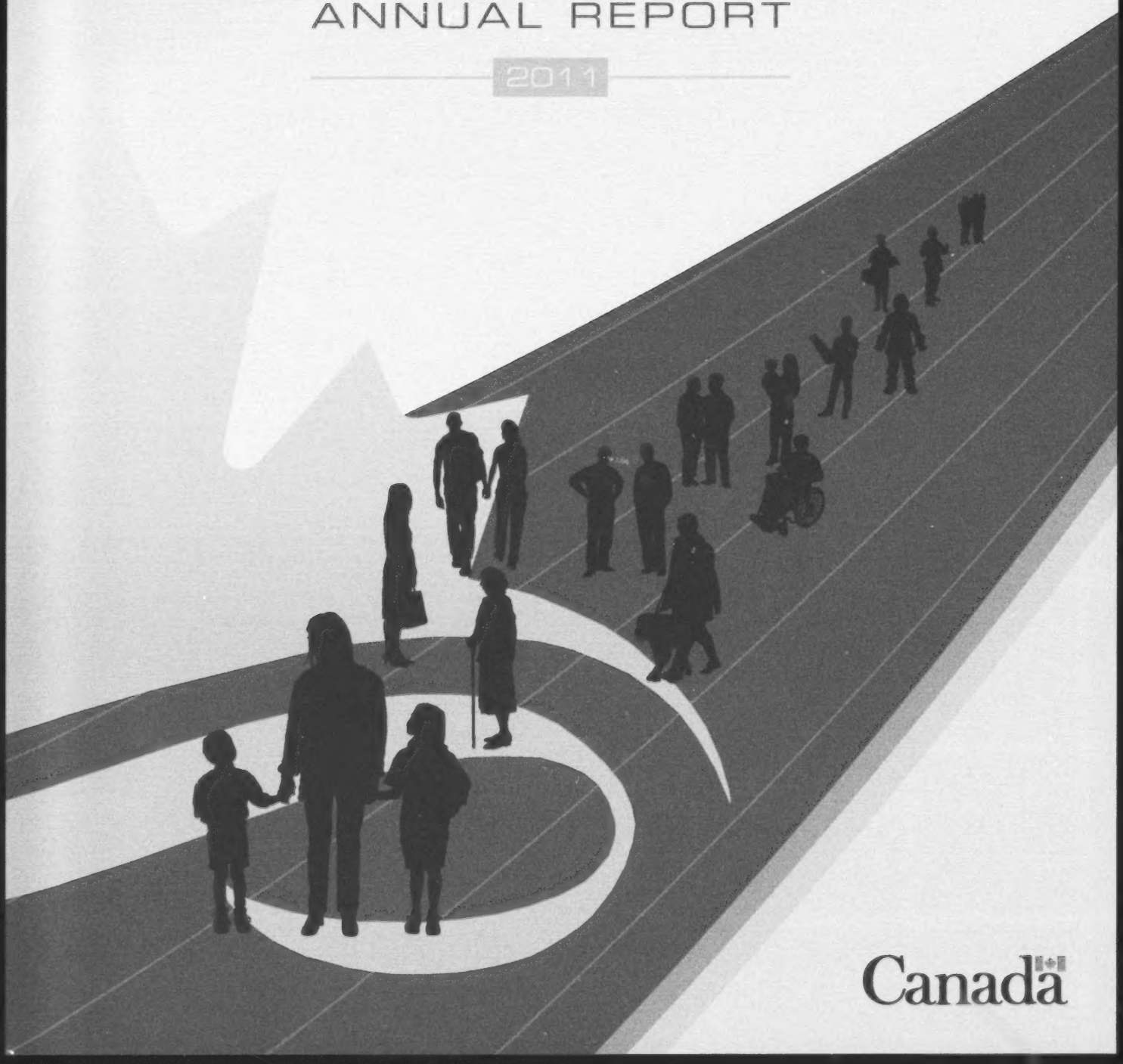
CANADIAN HUMAN RIGHTS COMMISSION

COMMISSION CANADIENNE DES DROITS DE LA PERSONNE

ANNUAL REPORT

2011



Canada

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CANADIAN HUMAN RIGHTS COMMISSION

COMMISSION CANADIENNE DES DROITS DE LA PERSONNE

Acting Chief Commissioner

Président par intérim

March 2012

The Honourable Noël A. Kinsella
Speaker of the Senate
The Senate
Ottawa, Ontario K1A 0A4

Dear Mr. Speaker:

Pursuant to section 61 of the *Canadian Human Rights Act* and section 32 of the *Employment Equity Act*, I have the honour to transmit the 2011 Annual Report of the Canadian Human Rights Commission to you for tabling in the Senate.

Yours sincerely,

David Langtry

David Langtry

Encl.

c.c.: Mr. Gary W. O'Brien
Clerk of the Senate and Clerk of the Parliaments

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CANADIAN HUMAN RIGHTS COMMISSION

Acting Chief Commissioner

COMMISSION CANADIENNE DES DROITS DE LA PERSONNE

Président par intérim

March 2012

The Honourable Andrew Scheer, M.P.
Speaker of the House of Commons
House of Commons
Ottawa, Ontario K1A 0A6

Dear Mr. Speaker:

Pursuant to section 61 of the *Canadian Human Rights Act* and section 32 of the *Employment Equity Act*, I have the honour to transmit the 2011 Annual Report of the Canadian Human Rights Commission to you for tabling in the House of Commons.

Yours sincerely,

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c.c.: Ms. Audrey O'Brien
Clerk of the House of Commons

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ACTING CHIEF COMMISSIONER'S MESSAGE

The *Canadian Human Rights Act* was created to provide equal opportunity to everyone in Canada. It has helped shape Canadian society to reflect the values that we share. It has contributed to the quality of life enjoyed by so many in Canada. Today, the concepts of equality, dignity and respect are widely recognized as essential to the foundation of modern democracy.

The 2011 Annual Report discusses the Commission's work in preventing discrimination, resolving disputes and raising awareness. It highlights significant cases where individuals successfully used the law to affect meaningful change. And it highlights important changes to the Act that took effect in 2011.

The most significant of these changes was the elimination of the section of the Act that specifically prohibited the Commission from receiving discrimination complaints related to the *Indian Act*. This means that over 700,000 people, principally residents of First Nations, are finally being treated equally under the law. They now have full access to the human rights protection that has helped make equal opportunity a reality for so many in Canada.

I am confident that this change has the potential to be a catalyst for improving living conditions on reserve but as I write this message, the way forward is not clear. The Commission has taken a strong position on a complaint involving child welfare services delivered on reserve, a case that has led us to seek judicial review of a ruling by the Canadian Human Rights Tribunal. The extent to which the *Canadian Human Rights Act* can be a catalyst for meaningful change for First Nations is one of the issues at stake in this critical legal test.

I have spent a great deal of energy telling people about this issue because I believe it is important. Real tangible change begins with finding ways to challenge the discriminatory attitudes and stereotypes that remain rooted in our society. And that is best accomplished when Canadians are engaged in an informed and constructive discussion.

When the Commission was first established, human rights law was uncharted territory. There was much to learn. Today, we are able to approach new issues with a wealth of knowledge and legal expertise. I am particularly proud of the fact that fewer than ten percent of the Commissions' decisions challenged in 2011 were overturned by judicial review. This is the highest success rate in the Commission's history.

Many people see discrimination as a thing of the past. But equality must apply to everyone. Explaining the challenges that remain in a way that resonates with Canadians is one of our most important functions. Whether that means working with employers to prevent discrimination, publishing the findings of important research, or participating in national debates on human rights issues, the Commission has a vital role to play.

Next year, the *Canadian Human Rights Act* will be 35 years old. We can be proud of our achievements, none of which would have been possible without the dedication and professionalism of our staff. But our work is not done. I think I speak for all of us when I say we are eager to take on the challenges that lie ahead.

David Langtry
Acting Chief Commissioner

SECRETARY GENERAL'S MESSAGE

This year marked a milestone in a three-year Commission-wide process that took a critical look at who we are and what we do.

Throughout this process, we challenged ourselves to find ways to better meet the needs of Canadians. We re-evaluated underlying assumptions, so as to find ways to improve productivity, effectiveness and efficiency in all aspects of our operations. Through it all, we strove to maximize the impact of our work for the net benefit of Canadian society.

We made investments in the development of more effective online tools. We streamlined our service delivery model; this resulted in the closure of some regional offices. We developed a simplified and more collaborative approach to employment equity audits, and in the course of that, improved the reach of those audits within the federal sphere. We clarified our international role to ensure that it reflects Canadian priorities. And we created a separate communications branch with a mandate to ensure that public discussion of human rights issues affecting Canadians is informed by insight and understanding.

The full repeal of section 67 of the *Canadian Human Rights Act*, which previously excluded all matters under the *Indian Act*, brought us a new set of issues. Wrestling with them has required a lot of relationship building, as well as a lot of listening and learning about traditional Aboriginal laws and customs.

At the same time, we have continued to build on our understanding of other federally regulated organizations, in order to gain a better sense of how we can be helpful. Our dealings with the public sector are noteworthy in this regard. Because of our efforts over the past three years, the Canadian Human Rights Commission is better prepared to anticipate change, to respond to emerging issues, and to assist the public sector in facing new realities. We are uniquely placed to do this, for the Commission is at once part of the public service, yet operates independently and apart from it.

By working more closely with employers, whether in the public sector, First Nations communities or those industries within the private sector that are federally regulated, we have been able to help them become more proactive in meeting their obligations under the *Canadian Human Rights Act* and the *Employment Equity Act*. This collaborative approach has reinforced the Commission's mandate under the *Canadian Human Rights Act* as a catalyst for change.

We live at a time when the pace of change challenges the relevance of public institutions. I am grateful to the staff of the Commission for their tireless dedication and effort to meet these challenges. And I am confident that the work we have done in the course of the past three years has better equipped the Commission to serve Canadians and merit the trust they have placed in us.

Karen Mosher
Secretary General

THE COMMISSION

Mandate

The Commission promotes the core principle of equal opportunity and works to prevent discrimination in Canada by:

- promoting the development of human rights cultures;
- understanding human rights through research and policy development;
- protecting human rights through effective case and complaint management; and
- representing the public interest to advance human rights for all Canadians.

Distinguishing between the Commission and the Tribunal

The Canadian Human Rights Commission and the Canadian Human Rights Tribunal are separate and independent organizations. Each has a different role in dealing with human rights complaints.

The Tribunal cannot consider a complaint unless it has been referred by the Commission. In most cases, however, the Commission first tries to settle complaints through mediation.

When a complaint cannot be settled, or when the Commission determines that further examination is warranted, it may refer the complaint to the Tribunal.

The Tribunal holds public hearings into complaints that cannot be resolved through its own mediation efforts.

At hearings, parties involved in the complaint can present arguments and call witnesses.

The Tribunal determines whether there has been discrimination based on a prohibited ground.

Commission members

A full-time Chief Commissioner acts as the Chief Executive Officer and leads the Commission. A full-time Deputy Chief Commissioner and three part-time Commissioners support the Chief Commissioner.

Commission operations

The Secretary General guides the daily operations of employees. The Commission's operating budget is $23 million (2011-2012 fiscal year).

Resolving Disputes

By law, the Commission must look at every discrimination complaint that it receives. When possible, the Commission encourages people to try to solve their disputes informally and at the earliest opportunity.

In the event no agreement is reached, the Commission may conduct an investigation. If it believes the complaint has merit, the Commission can refer it to the Canadian Human Rights Tribunal for further examination. Otherwise, the Commission will dismiss the complaint.

In 2011, the Commission:

- received 1,914 potential complaints;
- accepted 910 complaints;
- referred 167 complaints to alternate redress;
- approved 209 settlements;
- dismissed 174 complaints; and
- referred 129 complaints to the Canadian Human Rights Tribunal for further examination.

For more information, or to view other statistics and trends, visit the Commission's website at: **http://www.chrc-ccdp.ca/publications/ar_2011_ra/dr_stats_rd-eng.aspx**

THE YEAR IN REVIEW

Full Human Rights Protection for Canada's First Nations

New issues, new challenges

An important recent change to the *Canadian Human Rights Act* was a major focus of the Canadian Human Rights Commission in 2011.

As of this year, people governed by the *Indian Act* have the same rights to freedom from discrimination as everyone else in Canada. While one aspect of this change took effect immediately in 2008, when Parliament amended the *Canadian Human Rights Act*, a three-year transition period meant it did not take full effect until June 18, 2011.

When the *Canadian Human Rights Act* first became law in 1977, matters under the *Indian Act* were specifically excluded. This meant that the Canadian Human Rights Commission could not accept complaints from anyone who felt that they had been discriminated against in decisions or actions on many matters affecting their daily lives.

As a result, over 700,000 people, principally residents of First Nations, did not have the same access to human rights protections as everyone else in Canada. For example, if someone living on reserve believed they were unfairly prevented from participating in their community election, that person could not use the *Canadian Human Rights Act* to make his or her claim since First Nations elections are governed by the *Indian Act*.

"Just as the *Canadian Human Rights Act* has contributed to the quality of life enjoyed by so many in Canada, it now has the potential to be a catalyst for improving many aspects of life in First Nations communities." David Langtry at the National Press Theatre in Ottawa on June 17, 2011.

From left to right: Karen Mosher, Secretary General; David Langtry, Acting Chief Commissioner; and Philippe Dufresne, General Counsel speaking to reporters on June 17, 2011.

When Parliament broadened the *Canadian Human Rights Act* in 2008 to include matters under the *Indian Act*, it gave First Nations governments three years to adjust. Complaints regarding the Government of Canada could be brought immediately. But people could only begin filing discrimination complaints against First Nations governments as of June 18, 2011.

This change to the *Canadian Human Rights Act* was overdue. In view of its significance, the Commission held a news conference to announce the full coming into effect of the *Canadian Human Rights Act*, on June 17, 2011. The news conference, broadcast live on the Internet from the National Press Theatre in Ottawa, generated over 150 stories in national and regional media, including television, print, radio, and online.

Since June 18, 2011, the Commission has seen a rise in the number of complaints from First Nations regarding matters under the *Indian Act*. Issues raised in these complaints are complex and deal with a new area of law. Many will be precedent-setting.

Building awareness

For the past three years, the Commission's National Aboriginal Initiative has been working with First Nations and other Aboriginal stakeholders to raise awareness about the *Canadian Human Rights Act* and help communities adjust to their new obligations and responsibilities. The National Aboriginal Initiative team has been supported by every branch at the Commission. Altogether, Commission staff have participated in more than 130 meetings, conferences and other events with First Nations and other Aboriginal representatives.

During these meetings, the Commission learned that First Nations communities knew very little about the *Canadian Human Rights Act*. In some cases, people mistakenly believed they had no previous protection under the *Canadian Human*

Rights Act at all. People also did not understand what this change would mean for over 600 First Nations governments or the people they serve.

Throughout 2011, the Commission continued working to raise awareness. Extending a rare honour and privilege to a non-Aboriginal person, the Assembly of First Nations invited Acting Chief Commissioner David Langtry to address its Annual General Assembly in Moncton in July. Later that summer, Acting Chief Commissioner Langtry addressed the Native Women's Association of Canada Annual General Assembly.

"The change to the *Canadian Human Rights Act* entitles First Nations people to make full use of protections that others in Canada have enjoyed for over three decades." David Langtry speaking at the Annual General Assembly of the Assembly of First Nations on July 12, 2011.

Sherri Helgason, Director of the National Aboriginal Initiative, addressing the Federation of Saskatchewan Indian Nations in Saskatoon on January 31, 2011.

Commission staff made important contributions to this work. As an example, National Aboriginal Initiative Director, Sherri Helgason, participated in the annual conference of the Indigenous Bar Association as well as a special one-day meeting of the Federation of Saskatchewan Indian Nations to discuss the impacts of this change on individuals and governments.

Other activities included:

- Preparation, publication and distribution of a guide to the *Canadian Human Rights Act*, with specific examples relevant to a First Nations context. With close to 10,000 copies in circulation, the guide has become one of the most widely distributed documents in the history of the Commission;
- Preparation, publication and distribution of a human rights handbook with examples designed to help First Nations governments and employers address human rights issues;
- Launching the *do you know your rights?* website (**doyouknowyourrights.ca**) to provide individuals and organizations accessible information on federal human rights protections; and
- Participation in webcasts for First Nations governments, in partnership with the Assembly of First Nations, to discuss their rights and responsibilities under the Act.

Challenges ahead

In June 2011, the Commission tabled a Special Report to Parliament entitled: *Now a Matter of Rights: Extending Full Human Rights Protection to First Nations*. The Report was informed by the Commission's insights from three years of dialogue with First Nations and other Aboriginal representatives. It outlines many of the challenges ahead.

The report identifies a need for adequate resourcing of First Nations governments so they can meet their obligations under the *Canadian Human Rights Act*. First Nations face the task of sharing information about people's rights and responsibilities, finding ways to deal with complaints in the community and addressing complex issues like accessibility of buildings.

One challenge in particular is that this is a new area of law. Important issues of interpretation will inevitably arise. A complaint brought by the First Nations Child and Family Caring Society is one critical test that is before the court. This was a complaint that the Commission had referred to the Canadian Human Rights Tribunal. The complaint alleges that the formula for funding First Nations family service organizations discriminates against these agencies on the basis of race. At the Tribunal, the Commission intervened on behalf of the public interest. The complaint was opposed by the Attorney General of Canada. When the Tribunal dismissed the complaint, the Commission applied for judicial review by the Federal Court. A decision is expected in 2012.

The Commission believes that if the Attorney General's interpretation of the *Canadian Human Rights Act* prevails, it could nullify the intent of Parliament when it voted to give people living under the *Indian Act* the right to live free from discrimination. People governed by the *Indian Act* would have no recourse in many instances of discriminatory treatment affecting their daily lives.

The origins of an injustice

When the *Canadian Human Rights Act* was drafted in 1977, the federal government was in discussions with First Nations on reforming the *Indian Act*. During these discussions, the government promised to make no changes to the *Indian Act* before full consultations were completed.

The government believed that the proposed human rights legislation had the potential to strike down provisions of the *Indian Act*, thereby changing it. In order to uphold their commitment to First Nations, legislators included a section in the *Canadian Human Rights Act* that explicitly prevented people from filing complaints that had to do with the *Indian Act*. It was meant to be a temporary measure.

Although there were a number of attempts to remove the exemption from the legislation, the section was not fully repealed until 2011.

Changes in the law should help aboriginal youth

by David Langtry, Acting Chief Commissioner, Canadian Human Rights Commission

As published in the Globe and Mail on June 24, 2011.

In convocation ceremonies this month, beaming young faces reflect Canada's rich demographic fabric. With one exception: aboriginal youth.

Aboriginal kids on reserves are six times less likely to graduate from high school than the rest of our population. There's a better chance of ending up in jail.

I believe the Canadian Human Rights Act can and should be pivotal in changing this.

The Act was created to end racial and other discrimination once commonplace in our society. Excluding people living under the Indian Act from this law since 1977 was an injustice. That's now changed. As of this month, people governed by the Indian Act are entitled to the same human-rights protections as everyone else.

Chronic disparities in funding for health, education and social services for more than 700,000 First Nations people are the product of entrenched discriminatory policies. But the discriminatory thrust of such policies can be challenged now, under the Canadian Human Rights Act.

Disparities in essential services to First Nations people are well documented. In her final report as Auditor-General, Sheila Fraser again noted her profound disappointment that,"despite federal action in response to our recommendations over the years, a disproportionate number of first nations people still lack the most basic services that other Canadians take for granted. In a country as rich as Canada, this disparity is unacceptable."

The Canada-First Nations Joint Action Plan, recently announced by the federal government and native leaders, promises new thinking. Since human-rights law is something new in the equation, it could help break with the past. Now we will see whether our human-rights law has the same power to bring positive change to natives as it has to the rest of society.

As of June 18, people can file complaints against First Nations governments as well as the federal government if they believe they have been discriminated against in relation to services that affect their daily lives.

This should translate into an onus on First Nations governments to ensure better accommodation of people with disabilities, for example, or to provide recourse for those denied the right to vote in band council elections on the basis of race, gender, sexual orientation or family status.

Similarly, it puts an onus on the federal government to ensure that funding for essential services such as health, education and child welfare is equal to the levels of funding available off reserve. On this issue hinges the question of whether the Canadian Human Rights Act can be a catalyst for real change.

It's all coming to a head in a case before the courts. The First Nations Child and Family Caring Society of Canada and the Assembly of First Nations maintain that disparities in funding for child welfare services, which the federal government is required to provide on reserves, constitute discriminatory treatment. Simply put, the federal government puts up less money than the provinces and territories; on reserves, this translates into higher rates of foster care and poorer prospects of surviving a troubled childhood.

Ottawa disagrees. The Attorney-General of Canada says the Canadian Human Rights Act does not apply to federal government funding for services. The Canadian Human Rights Commission opposes such a limitation on our jurisdiction, and we are saying so in court.

If the Attorney-General succeeds, the federal government would get sweeping immunity from human rights law. Complaints about access to clean water, health and education would be turned away before they are even heard.

This is critical for aboriginal youth – close to half a million strong, the fastest growing segment of Canada's population. Even when a young aboriginal person can get into university, there's often no money for it. Not only is this unfair and discriminatory, it's a collective failure that may ultimately hurt Canada's competitive advantage in tomorrow's global economy.

No one will forgive our failure. The Canadian Human Rights Act can make a difference for aboriginal youth, if we don't stand in the way.

Human Rights Accountability in National Security Practices

The human rights implications of national security measures have been the focus of research and investigative work by the Commission over the past decade. In November 2011, the Commission tabled a Special Report to Parliament: *Human Rights Accountability in National Security Practices*.

Ten years after the 9/11 attacks, national security and human rights continue to be a matter of public debate. The media regularly tell stories of air travellers who have experienced discrimination during security screening because of their race, religion or disability.

At the heart of the debate is the question of how to ensure our collective safety while respecting the rights of individuals.

The Supreme Court of Canada has confirmed that Canadian security organizations have two equally important responsibilities. The first is to ensure the safety of people in Canada. The second is to ensure that security measures do not discriminate against the people they are designed to protect.

A decade of research

Over the past ten years, the Commission has conducted extensive research on human rights and national security. It has consulted with the Canadian agencies responsible for national security. And it has analyzed court cases, inquiries into individual experiences, and the work of Parliamentary and Senate Committees.

The Commission learned that many organizations have policies designed to prevent discrimination, but few can demonstrate whether or not their policies are working. For example, national security institutions have stated that they do not use racial or ethnic profiling in their work. However, without methods to monitor and prove that profiling is not taking place, organizations will always be vulnerable to criticism. Good intentions alone will not be sufficient to defend their record.

Proposing solutions

In 2011, the Commission took two steps to address this issue. To begin with, it tabled a Special Report to Parliament to inform Parliamentarians of these operational challenges and provide recommendations.

The Commission's Special Report to Parliament argues that governance and accountability frameworks are necessary to ensure that national security institutions consider human rights in every day operations, and that these are currently lacking. It explains that without an accountability structure, national security institutions have no credible way to show that they are consistently adhering to Canadian human rights standards.

The Report recommends that Parliament adopt legislation that requires national security institutions to track human rights-related performance. It also recommends that those institutions share their findings with the public.

As an additional step, the Commission collaborated with organizations responsible for national security to develop a guide entitled *The Human Rights Impact Assessment*. This guide will help organizations ensure that security standards, policies, and practices are both effective and respectful of human rights.

The cooperation that the Commission received from its partners in developing the guide demonstrates a shared respect for human rights and a shared commitment to find workable solutions to operational challenges.

The Commission believes that these approaches are necessary because Canadians expect human rights to be protected in the course of protecting national security. This expectation is anchored in the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act* and government policies.

Adherence to human rights should be reportable for all national security organizations. This would establish a consistent way for these institutions to document their performance and share that information with Canadians, thereby furthering their trust.

"There is clearly a total lack of accountability mechanisms." Charles Théroux, Director of Research, Canadian Human Rights Commission, Toronto Star, November 29, 2011.

Travellers must believe security treats them equally

By David Langtry, Acting Chief Commissioner, Canadian Human Rights Commission

As published in the Calgary Herald on December 1, 2011.

As Canada heads into the busiest travel season of the year, let's spare a thought for the thousands of people working hard to ensure our safety. Our holidays are their busiest time.

While multiple organizations are involved in national security, nobody has as much direct contact with the public as airport screening officers. Theirs is not an easy task. The sheer volume of travellers screened in Canadian airports – about 50 million a year, schlepping more than 60 million pieces of baggage – is staggering.

Of course, we all know that harried passengers can be a challenge. The constant evolution of security threats is an even greater one.

Serious incidents, though rare, trigger sweeping, global responses. Plots to detonate explosives hidden in underwear or smuggled on board as liquids force security organizations to rethink procedures, update technology, rewrite rules. Every new threat seems to lead to a measure that is more intrusive. Travellers accept these impositions in the belief that it's for the greater good, and what's more, we're all in the same boat. But do we really know if we're all being treated the same? How can we be sure?

Some members of Canada's visible minority communities have their doubts. They believe travellers are singled out solely because of their race or ethnicity. Visible minority groups shared their concerns with the United Nations independent expert on minority issues during a mission to Canada two years ago.

Yet all the organizations involved in national security are bound by the Canadian Human Rights Act, which prohibits discriminatory practices such as racial profiling. Security organizations are cognizant of their responsibilities and obligations under the act. Most have policies that reflect a commitment to balance respect for human rights with effective national security measures.

But public confidence depends on the extent to which organizations can demonstrate that well-intentioned policies are actually put into practice.

Make no mistake, public confidence is critical. It's easier to enforce laws and other measures that keep us safe when people support them. Support depends on trust that rules are fairly and consistently applied.

Over the past decade, the Canadian Human Rights Commission has conducted extensive research on national security and human rights. We have looked at the practices of organizations that provide national security to Canadians. We learned that while many security organizations have policies to prevent discriminatory practices, few can demonstrate with hard numbers and cold facts that their policies are followed.

This is because there are no hard numbers. National security organizations are not required to collect data and account publicly for how they meet their human rights obligations. Without monitoring to transparently demonstrate that their human rights policies are effective, security organizations are vulnerable to criticism and the potential loss of public trust.

The commission's research has been distilled into a special report to Parliament, tabled on Monday. In it, the commission recommends that Parliament put accountability mechanisms into law. Parliament should require national security organizations to track their human rights performance and report back on it to the Canadian public.

Effective security measures and respect for human rights are totally compatible. Indeed, one reinforces the other. To demonstrate this, the commission collaborated with a number of national security organizations to develop a tool kit for tracking human rights performance and preventing discrimination. We call it the Human Rights Impact Assessment for Security Measures, and it's a companion piece to our special report, both of which are available on our website.

There is a clear willingness on the part of national security organizations to ensure that Canadians can be confident in how they meet human rights obligations. All that is lacking is a legislated requirement to introduce governance and accountability frameworks to show that good intentions are translated into action.

Such an enhancement to public policy would bolster public trust. If the people and organizations that work hard to ensure our safety are equally effective in respecting human rights, let's ensure that Canadians know that and credit them for it.

PROMOTING HUMAN RIGHTS IN DAILY LIFE

The Human Rights Maturity Model

There is a strong business case for building corporate cultures that respect human rights. It is widely understood that people no longer focus solely on financial compensation when considering employment opportunities. Work-life balance, an environment that prioritizes respect for the individual, equality of opportunity, and freedom from discrimination are also important.

"Our values say we don't leave anyone behind. The business case says it's a stupid thing to do."

John Tory
Chair, Greater Toronto Civic Action Alliance
December 7, 2011

Many of Canada's top employers have recognized this trend and embrace it. The Commission developed the Human Rights Maturity Model to assist organizations in creating sustainable workplace cultures that prioritize human rights. The Maturity Model provides organizations with the tools and guidance needed to improve workplace policies and practices.

"The Human Rights Maturity Model provides a clear picture of what a human rights culture looks like and what an organization needs to do in order to achieve it. Its biggest asset is its flexibility and adaptability. It has helped us take employment equity to the next level by fostering an inclusive workplace and it has helped me a great deal in my role as Employment Equity and Diversity Specialist at FCC."

Nadine Hakim, B.A.
Specialist, Employment Equity and Diversity
Farm Credit Canada
Toronto, December 7, 2011

"The materials are excellent. This collaborative process is a breath of fresh air."

Misty Giroux
Manager, Legislated Programs and Privacy Coordinator
Nav Canada
Toronto, December 7, 2011

In 2011, 12 federally regulated organizations were using the Human Rights Maturity Model. Six organizations, including the Canadian Human Rights Commission, completed a pilot testing exercise. During the pilot testing, the organizations were led through a process that assisted them in documenting and reporting on how human rights are integrated into daily workplace practices. Organizations participating in the pilot agreed that the Maturity Model helped them be more proactive in preventing discrimination.

The Commission has also developed an interactive web-based self-assessment tool for the Maturity Model. Employers input specific information about their workplace, and then self-assess their "maturity" by looking at current human rights practices. The online tool generates a "gap analysis" and an action plan that helps organizations improve their processes and track their progress.

The Maturity Model was designed to help organizations create and sustain a workplace culture based on equality, dignity and respect. The online tool provides resources that can help bring change. It is scalable and adaptable to organizations of all sizes.

Fitness-to-work

The Commission receives more complaints related to disability than any other ground in the *Canadian Human Rights Act*. Many of these complaints are filed by people who feel that they have not been properly accommodated by their employer following an illness or injury.

When someone returns to work following an illness or injury, it is common for them to receive a "fitness-to-work-assessment," performed by a medical professional. This assessment of the physical and mental health of an employee determines whether changes to their duties or their work environment are required.

The Commission has found that many of the disability complaints that it receives are the result of inconsistent fitness-to-work processes. Misunderstandings between the parties involved, missteps due to confidentiality and

privacy concerns, or perceived limits to what can be done because of existing policies or collective agreements, are often cited as reasons for why an employee was not properly accommodated.

To address this issue, the Commission is working with government departments, private sector companies, and healthcare providers to develop a standardized fitness-to-work process. This process will establish common terminology and establish clear guidelines for accommodation, as well as clarify the roles and responsibilities of employers, employees, unions, health care providers and insurance boards.

Accommodating employees with a disability is a challenge facing many employers today. This standardized approach to workplace accommodation will contribute to a more inclusive workplace that ultimately benefits employers and employees alike.

Mental Health in the Workplace

In 2011, 42.5% of disability complaints were related to mental health. The stigma around mental health can be a significant barrier. A supportive and accommodating workplace helps people with mental health problems reach their professional goals.

The Commission is working with partners such as the Mental Health Commission of Canada to counter stigma and discrimination against people with mental illness.

Targeting Employment Equity

The *Employment Equity Act* applies to both the federal public sector and the federally regulated private sector. It protects approximately 13% of Canada's workforce.

The Canadian Human Rights Commission works with over 600 federally regulated employers to ensure compliance with the *Employment Equity Act*. The Act helps ensure that among federally regulated employees, equal employment opportunity is afforded to four designated groups of people: women, Aboriginal people, persons with disabilities, and members of visible minorities.

2011 was the first full year that the Commission applied its improved employment equity audit process. Under the new approach, employers with difficulty in maintaining equity for members of the four designated groups are prioritized for audits. Employers who demonstrate they have achieved higher representation are acknowledged as top performers in employment equity.

Through this new approach, the Commission broadened its reach and had a greater impact on employment equity. The Commission recognized 45 top performers in employment equity, and audited 53 other organizations.

The federally regulated sector includes employers in all federal government departments and agencies, federal Crown corporations, chartered banks, inter-provincial transportation companies, air and marine transport, and telecommunications and broadcasting companies. Approximately 1.1 million employees work in the federally regulated sector. Canada's provinces and territories promote employment equity in areas under their jurisdiction, under their own legislation.

UN Committee on the Rights of the Child

In November 2011, the Commission submitted a report to the United Nations Committee on the Rights of the Child, highlighting the situation of Aboriginal children in Canada. This UN Committee is a body of independent experts that monitors implementation of the Convention on the Rights of the Child by governments that have signed the Convention, including Canada.

The Commission's report focused on the inequities and discrimination faced by Aboriginal children in Canada.

The report cites the following facts:

- 27.5% of Aboriginal youth under 15 years of age live in low-income households compared to 12.9% for non-Aboriginal children.
- There are about eight times more Aboriginal children in care than non-Aboriginal children.
- Key health indicators such as birth weight, infant mortality and teen pregnancy all suggest a gap with non-Aboriginal peers. There are also significant problems with substance abuse, diabetes and obesity.
- In 2006, the proportion of the Aboriginal population without a high school diploma was 34%, whereas, for the non-Aboriginal population, it was only 15%.
- Aboriginal youth are significantly overrepresented among young offenders.
- Aboriginal girls experience violence at a higher frequency and greater severity than non-Aboriginal girls.

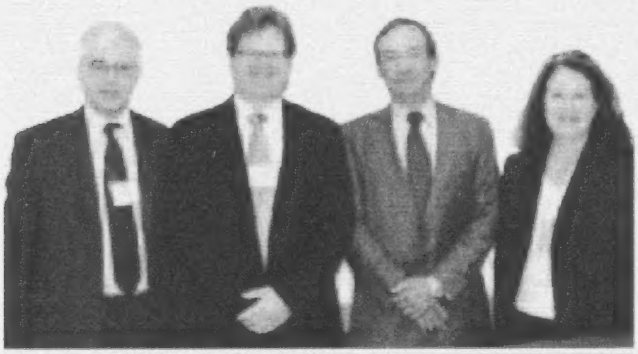
The Commission's report also acknowledged that other vulnerable groups such as children belonging to racial, ethnic or religious minorities and children with disabilities are also in need of special care.

UN Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) is a landmark in the struggle to achieve full equality. In 2011, the Commission promoted the full implementation of the Convention in Canada.

Commission staff have participated in conferences and meetings to explain the importance of the Convention for Canadians and how it could be applied with regard to specific issues such as promoting mental health in the workplace.

Article 33 of the Convention requires that Canada establish an independent body to protect, promote and monitor the rights guaranteed by the Convention. As a UN-accredited national human rights institution, the Commission would be well suited to carry out this function.



David Langtry meeting with Gilles Rivard, Ambassador and Deputy Permanent Representative of the Permanent Mission of Canada to the United Nations while attending the Fourth Conference of States Parties of the Convention on the Rights of Persons with Disabilities in New York City. From left to right: Harvey Goldberg, Strategic Initiatives Team Leader of the Canadian Human Rights Commission; David Langtry; Gilles Rivard; and Nancy Milroy-Swainson, Director General, Office for Disability Issues, Human Resources and Skills Development Canada.

Raising Awareness

Irshad Manji

In March 2011, the Commission partnered with the University of Ottawa, the Canadian Race Relations Foundation and the CBC to host an evening of discussion with Irshad Manji. The critically acclaimed Canadian author and head of the Moral Courage Project at New York University shared her views on individual rights and social integration in Canadian society. Ms. Manji was welcomed by University of Ottawa President Allan Rock, CHRC Secretary General Karen Mosher and the CBC's Lucy van Oldenbarneveld. CBC Radio host Paul Kennedy directed the evening's discussion. Through extensive audience participation, the event gave voice to many sides of the issue, and reached a broader national audience when it was broadcast on the highly acclaimed CBC Radio program, *Ideas*.

From left to right: Irshad Manji; Dr. Ayman Al-Yassini, Executive Director of the Canadian Race Relations Foundation; Karen Mosher, Secretary General of the Canadian Human Rights Commission; and Allan Rock, President of the University of Ottawa.

HUMAN RIGHTS ISSUES IN 2011

Equal Pay for Work of Equal Value

Ruth Walden v. Government of Canada

Ruth Walden worked as a medical adjudicator for the Canada Pension Plan. Medical adjudicators determine whether a person is eligible to receive the Canada Pension Plan (CPP) disability benefit. Given the level of expertise required for this job, all medical adjudicators employed by the federal government must be trained healthcare professionals. Ms. Walden is a registered nurse.

Ruth Walden and more than 200 other medical adjudicators working for the federal government filed a complaint with the Canadian Human Rights Commission against their employer on the ground of sex discrimination.

They argued that a separate group of federal employees, classified as medical advisors, were performing the same functions yet were paid at a higher rate. The medical advisors were predominantly male doctors.

The Commission participated in the case by representing the public interest at both the Tribunal hearings and in Federal Court.

In June 2011, the Federal Court of Appeal made a decision. Ms. Walden and her fellow medical adjudicators were awarded $2.3 million for pain and suffering caused by decades of discrimination and inequality of pay.

In April 2012, the Canadian Human Rights Tribunal will hear arguments on what level of compensation the nurses should receive for lost wages. The wage loss settlement could date back to 1978.

PSAC v. Canada Post

A 2011 Supreme Court decision marked the end of the longest pay-equity dispute in Canadian history.

It began in 1983 when the Public Service Alliance of Canada, the union that represents clerical employees at Canada Post, observed that their members were not receiving equal pay for work of equal value.

The union believed that the clerical work, performed mostly by women, was equal in value to the higher paying sorting and delivery work that was performed mostly by men.

The union filed a complaint to the Canadian Human Rights Commission on behalf of the group of female employees. The union argued that the wage gap between the two groups of Canada Post employees was discriminatory.

After a thorough investigation that lasted seven years, the Commission referred the complaint to the Canadian Human Rights Tribunal. The evidence collected during the investigation was so extensive that the Tribunal hearing lasted 400 days over the course of ten years. In 2005, the Tribunal ruled in favour of the employees and ordered Canada post to pay $150 million to the 2,300 women named in the complaint.

In 2008, the Tribunal's decision was overturned by the Federal Court following Canada Post's request for judicial review.

The Commission appealed the decision to the Federal Court of Appeal only to have it dismissed. The Commission then filed an appeal to the Supreme Court of Canada.

On November 17, 2011, after deliberating for twenty minutes, the Supreme Court rendered a unanimous decision and upheld the Tribunal's 2005 decision.

Freedom of Expression and Hate Speech

In 2011, public discussion about Canada's hate speech laws gained new momentum. Canadians on both sides of the debate voiced their opinions before the Supreme Court of Canada, in Parliament, and on the pages of Canada's newspapers. At the centre of this important issue are questions about the limits of freedom of expression, the consequences of hate speech, and the role of Canada's Criminal Code in protecting Canadians from hateful messages.

Adopting the Principles of Universal Design

The National Capital Commission constructed the York Street steps to provide people with a convenient path between the Byward Market and Parliament Hill.

Shortly after the steps were completed, Bob Brown, an Ottawa-based disability rights advocate, filed a formal complaint to the Canadian Human Rights Commission. He argued that the National Capital Commission did not take all modes of mobility into account when designing and constructing the staircase. People with disabilities or mobility impairments were excluded.

Hateful speech must be punished

By David Langtry, Acting Chief Commissioner, Canadian Human Rights Commission

As published in the National Post on October 18, 2011.

Two processes have rekindled public interest in the long-running debate over whether Canada's hate laws are reasonable limits on freedom of expression. In one, the Supreme Court of Canada will rule on Saskatchewan's hate laws in the case of William Whatcott, an anti-gay activist. And in Parliament, MPs will consider Bill C-304, a private member's bill that would strip the Canadian Human Rights Act of its hate-speech provisions.

The issue affects all of us. It requires us as a community to consider our tolerance of speech that vilifies and dehumanizes others because of race, religion or sexual orientation. Given the strong feelings on all sides, some historical context might be helpful.

If you were in downtown Toronto back in the 1970s, you might have bumped into an elderly, articulate fellow in a tweed hat, handing out cards that invited you to phone a number.

Dial it, and a voice on an answering machine accused Jews of an international conspiracy "against the white race." The voice was that of the man in the tweed hat, an avowed fascist, a Canadian who supported Hitler during the Second World War. His name was John Ross Taylor.

Taylor was never a household name. Yet he came to define the legal boundaries of the expression of hatred in this country for decades.

Taylor's messages passed through a loophole in Canada's Criminal Code, which prohibits speech that incites racial hatred. An exemption for "private communications" allowed neo-Nazis to spread propaganda using the telephone.

Across Europe and North America, white supremacist organizations were growing. They were increasingly bold in defying our laws and social order. Memories of our collective sacrifices to fight the Nazis were still warm, and yet, the cold shadow of the Holocaust was stirring.

In Canada, where Parliament was debating the first ever federal human rights legislation, MPs voted for a provision designed to force Nazis like Taylor to stop. Section 13 of the Canadian Human Rights Act was meant to target only the most extreme expressions of hate, a defining principle narrowly upheld by the Supreme Court of Canada when Taylor challenged the law. Today, the Canadian Human Rights Commission rigorously applies the court's "Taylor test" to assess whether something is "hate speech," or just offensive.

Just after 9/11, at a time of challenge to the social order, Parliament broadened Section 13 to include hate on the Internet. Yet complaints about hate speech continued to be rare, amounting to a tiny fraction of the Commission's caseload. Complaints almost exclusively concern individuals at the extreme margins of society who seek to dehumanize and vilify people on the sole basis of their belonging to a racial or ethnic group, or their sexual orientation.

A notable exception was a complaint against Maclean's magazine in 2007. The Commission examined the complaint, and dismissed it. Nevertheless, an image of the Commission as a censor of a free press persists in some quarters.

Though I believe this is undeserved, I understand some of the reasons. Critics have said that our process of examining complaints is, by its very nature, punitive. But as servants of Parliament we are bound by our legislation to process complaints we receive.

Yet if hate speech were a business line, we would be out of business. Age discrimination, discrimination against people with disabilities, the extension of human rights protections to Canada's First Nations – these are the issues we work on every day. Because of Taylor, at the federal level Canada has not one but two legal instruments to pursue extremists who propagate hate. One is the Criminal Code. The second is the Canadian Human Rights Act.

The Criminal Code requires the approval of an attorney general for a charge to be laid. This is an unusually tough test. It discourages prosecutions. Police forces are reluctant to invest resources in investigations they doubt will lead to a charge. Few have resources to invest in hate crime units.

If MPs vote to repeal Section 13 of the Canadian Human Rights Act, as Bill C-304 proposes, perhaps Parliament should also make it easier for police to lay a charge based on evidence. Perhaps, too, it would be useful to ensure that police have the resources they need to gather that evidence.

If the Canadian Human Rights Act is not the best vehicle to counter hate speech, Parliament should ensure the Criminal Code is up to the job.

Following an investigation, the Canadian Human Rights Commission referred the case to the Tribunal. It also chose to represent the public interest in the case.

In August 2011, the case was settled. The parties agreed to create a universal accessibility committee. The committee, vice-chaired by Bob Brown, will look at all future National Capital Commission projects to ensure that the fundamental principles of accessibility and inclusion are incorporated into the design and building process. Although it took some years to reach this settlement, the outcome was hailed as a victory for the rights of persons with disabilities.

Equal Treatment for Canada's Fallen Soldiers

In 2006, Corporal Matthew Dinning was serving as a military policeman in Afghanistan when he was killed by a roadside bomb.

As Corporal Dinning was not married, nobody in his family qualified for the Canadian Forces death benefit. Only spouses or common-law partners of fallen soldiers are eligible for this lump-sum payment of $250,000.

In 2007, Corporal Dinning's father filed a complaint with the Canadian Human Rights Commission against Veterans Affairs Canada. He argued that the death benefit discriminates against single soldiers on the ground of family status. The Commission referred the case to the Canadian Human Rights Tribunal.

In November 2011, Veterans Affairs Canada recognized Cpl. Dinning's girlfriend as his common-law spouse. As a result, she received the death benefit that had been previously withheld. It also meant that the case was dismissed by the Canadian Human Rights Tribunal, because technically, Corporal Dinning was no longer single.

Despite the fact that Mr. Dinning no longer had a case, the policy that treats fallen soldiers differently based on their marital status is still in place. This is why the Commission asked the Tribunal to make a ruling and clarify whether the policy for awarding the death benefit is discriminatory.

The Tribunal did not provide a final ruling and the issue remains unresolved.

Two Important Supreme Court Decisions

In late October 2011, the Supreme Court of Canada clarified the powers of human rights tribunals in Canada.

In *British Columbia Workers' Compensation Board v. Figliola*, the Court ruled that, for the most part, people cannot come to a human rights tribunal to re-litigate issues that have already been considered. This means that, with the exception of a few unique circumstances, Canadian human rights tribunals cannot hear complaints that have already received a final decision by another adjudicative body such as a compensation board or labour board.

In *Canadian Human Rights Commission and Mowat v. Attorney General of Canada*, the Supreme Court of Canada found that the Canadian Human Rights Tribunal cannot award legal expenses or costs incurred by successful complainants. This means that while the Tribunal is authorized to award compensation for lost wages or pain and suffering, it cannot compensate a person for the cost of hiring a lawyer to represent him or her. The Commission is reviewing the operational effect of this decision.

A Human Rights Victory for Canada's Aging Population

As Canada's boomer generation ages, more and more people want to continue to work past the age of 65, whether for personal or financial reasons. For decades, both the *Canadian Human Rights Act* and *Canada Labour Code* contained provisions that made it legal for employers to force employees to retire once they reach a certain age, regardless of their ability to do the job.

Since 1979, the Canadian Human Rights Commission has called for repeal of the mandatory retirement provisions of the *Canadian Human Rights Act*. Many federally regulated employers as well as the federal public service abolished it on their own initiative. Yet the Commission continued to receive many age discrimination complaints related to mandatory retirement.

Late in 2011, the Government of Canada corrected this issue by repealing the mandatory retirement provisions in Canadian law with the passing of the *Budget Implementation Act*.

The Commission released a statement congratulating the Government for its decisive action in striking down mandatory retirement. "We're not born with date stamps saying our fitness for work expires at 65," said David Langtry, Acting Chief Commissioner. "Age discrimination is discrimination, pure and simple."

Human Rights in Canada

In 1948, with the horrors of WWII still fresh in memory, world leaders gathered at the United Nations to lay the foundations for a new world order. Unanimously, at an historic session of the General Assembly, they adopted the Universal Declaration of Human Rights.

Inspired by ideals of peace and social justice, the Declaration provided a set of principles that to this day guide human rights law around the world.

The Declaration inspired Canadian leaders to enshrine many of the fundamental human rights championed by the UN into Canadian law, and at all levels of government. In Canada, protecting human rights is a shared responsibility, in keeping with the sharing of powers of governments in Canada's federal system.

Canada's provinces were among the first to adopt human rights codes. These applied to areas of activity under provincial jurisdiction, things like restaurants, stores, schools, housing and most workplaces. Canada's territories have also enacted human rights legislation.

In 1960, **the federal government** introduced Canada's first Bill of Rights, a precursor to the ***Canadian Charter of Rights and Freedoms*** **(1982)**. The Charter was given significantly more legal force as it is part of the Constitution. The Charter protects fundamental rights and freedoms for all Canadians. Importantly, it protects civil and political rights of all individuals from policies and actions of government, including legislation.

The ***Canadian Human Rights Act (1977)*** is different. It resembles the provincial and territorial laws that in many cases preceded it. The *Canadian Human Rights Act* is legislation that protects people against discrimination based on race, age, sex, sexual orientation and seven other grounds. The Act protects individuals who are either employed by Canada's federal government or who receive services from it. It also governs organizations that are federally regulated such as inter-provincial transportation, banking, broadcasting and some First Nations organizations.

The Canadian Human Rights Tribunal may be called on to decide on complaints that are referred to it by the Canadian Human Rights Commission. Only the Tribunal has the authority to order a remedy or award damages.

How Canada Divides Responsibility for Human Rights

The *Canadian Charter of Rights and Freedoms*

The Charter protects the fundamental freedoms of all Canadians from policies and actions at all levels of government. For example, laws in Canada can be struck down by the courts if they are contrary to the rights and freedoms guaranteed by the Charter.

The *Canadian Human Rights Act*

Under the Act, the right to enjoy freedom from discrimination is protected for everyone in Canada who receives service from or is employed by the federal public service. It also applies to private sector companies that are federally regulated. For example, if you feel discriminated against while receiving a service at a bank, or while participating in a federal government job selection process, these are matters most likely involving the *Canadian Human Rights Act*.

Provincial/Territorial Laws

Canada's provincial and territorial governments help ensure that people's rights are upheld in all non-federal areas such as restaurants, schools, housing and most private sector workplaces. For example, if a landlord refuses to rent out an apartment based upon a person's race, religion, sexual orientation, or other grounds specified in law, this is likely a provincial or territorial matter.

Did you know?

The first draft of the Universal Declaration of Human Rights was written by a Canadian. John Humphrey was a Canadian lawyer and scholar who served as Director of Human Rights for the United Nations Secretariat from 1946 to 1966.

an Rights in Canada